



# Peckar & Abramson

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## VIA ECF

August 30, 2011

Honorable Arlene R. Lindsay  
Honorable E. Thomas Boyle  
United States Magistrate Judges  
Eastern District of New York  
Long Island Federal Courthouse  
100 Federal Plaza  
Central Islip, New York 11722-4451

**RE: Allen v. Devine, et al., No. 09 Civ. 0668 (ADS) (ETB)  
Excelsior v. Devine, et al., No. 10-CV-1319 (ADS) (ARL)  
Our File No.: 5122/196500**

Dear Judges Lindsay and Boyle:

Peckar & Abramson, P.C. is counsel to Christopher Devine, a defendant, counterclaimant and third-party plaintiff in *Allen v. Devine, et al.*, No. 09 Civ. 0668 (ADS)(ETB) ("*Allen*") and a defendant and third-party plaintiff in *Excelsior v. Devine, et al.*, No. 10-CV-1319 (ADS)(ARL) ("*Excelsior*") (together, the "Related Actions"). I write on behalf of Mr. Devine and with permission on behalf of the following parties in the *Excelsior* case: plaintiff Excelsior Capital, LLC and defendants Bruce Buzil, Greenberg Traurig LLP, and Robert Neiman. This letter provides a status report pursuant to Judge Lindsay's Order dated July 18, 2011.

## Substitution of the Estate of C. Robert Allen, III

As we noted in our last letter dated July 15, a suggestion of death was filed on behalf of C. Robert Allen, III ("Bob Allen"), plaintiff and counterclaim defendant in *Allen* and third-party defendant in *Excelsior* on March 17, 2011. On June 14, we filed motions on behalf of Mr. Devine to substitute Grace Allen, in her capacity as executrix of Bob Allen's estate, for Bob Allen as a counterclaim defendant in the *Allen* case and as a third-party defendant in the *Excelsior* case. On June 15, Reed Whittemore, a probate attorney, filed motions to substitute Bob

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Allen's estate for Bob Allen as the plaintiff in the *Allen* case and as a third-party defendant in the *Excelsior* case. All of these motions are unopposed and remain pending, however no attorney has filed a notice of appearance in either of the Related Actions for Grace Allen as executrix or otherwise on behalf of the Bob Allen estate.

## **Discovery**

On July 28, Excelsior Capital, plaintiff in the *Excelsior* case, wrote to the Court to request an extension of the deadline for all discovery in that action from November 1, 2011 to December 15, 2011. Defendants agreed not to oppose the request, provided that Plaintiff agree not to request another extension if the Court decided the substitution motion mentioned above prior to August 31, and Plaintiff so agreed. On August 1, Plaintiff's request was granted by the Court.

Defendants had already completed their document productions as of the last status report, and since that time Plaintiff has completed its document production with the exception of documents from former counsel in a related state court action, which is the subject of a meet and confer.

As we noted in our last letter, Bob Allen had not completed his document production in the Related Actions before his death, and to our understanding, production of these documents will not resume in either action unless and until the substitution motion is granted. Prior to Bob Allen's death, issues had been raised with Bob Allen and his son, Luke Allen, a third-party defendant in the *Allen* action (together, the "Allens") with regards to documents in the possession of their former outside counsel, and the meet-and-confer process had reached an unsuccessful conclusion shortly before Bob Allen's death. Upon substitution of the estate, the *Excelsior* Defendants intend to file a motion to compel production of outside counsel documents within the custody and control of the Allens. All parties to the *Excelsior* case expect to exchange privilege logs by September 15.

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Depositions have not commenced in the Related Actions as it was only recently that document discovery was substantially completed (with the exception of production by the Allens). If the parties are to complete fact and expert discovery by the December 15 deadline, it will be necessary to commence depositions in the near future.

## State Court Action Trial

The Court should also be aware that on August 23, a trial commenced in a related state court action, *Excelsior Capital, LLC v. Superior Broadcasting Co.*, No. 08289/2007 (Sup. Ct., Nassau County), whereby Excelsior Capital is prosecuting a retrial against Bob Allen's estate as to guarantees executed by Bob Allen on promissory notes provided to Excelsior Capital in 2004.

Respectfully submitted,

A handwritten signature in black ink, reading "David J. Scriven-Young" with a stylized flourish at the end.

David J. Scriven-Young

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cc: All counsel of record by ECF